

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED ARAB EMIRATES AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the People's Republic of China and the Government of the United Arab Emirates (hereinafter collectively referred to as the Contracting States and each referred to as a Contracting State),

Desiring to create favourable conditions for greater economic co-operation between them and in particular for investments of one Contracting State in the territory of the other Contracting State,

Recognizing the need to protect investments and to stimulate the flow of investments and individual business initiatives with a view to the economic prosperity for both Contracting States;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) The term "investment" shall comprise every kind of asset invested by investors of one Contracting State in the territory of the other Contracting State in accordance with the laws and regulations of that State, though not limited to the following:

(i) Movable and immovable property as well as any other property rights in rem such as mortgages, liens, pledges, usufruct and similar rights;

(ii) Shares, stocks and debentures of companies or other rights or interests in such companies, loans and bonds issued by the investors of the Contracting State and returns retained for the purpose of re-investment;

(iii) Claims to any performance having economic value associated with an investment;

(iv) Copyrights, trademarks, patents, industrial designs and other industrial property rights, know-how trade secrets, trade names and goodwill;

(v) Any rights conferred by law or contract and any licences and permits pursuant to law, including the rights to exploration and exploitation of natural resources.

Any alteration of the form in which assets are invested shall not affect their classification as investments.

(2)

(a) The term "investor" shall mean for the People's Republic of China;

1. Natural and legal persons who have the nationality of the People's Republic of China;

2. Economic entities established in accordance with the laws of the People's Republic of China and domiciled in the territory of the People's Republic of China.

(b) The term "investor" shall mean for the United Arab Emirates:

1. The Federal Government of the U.A.E.

2. The Local Governments and their local and financial institutions.

3. The natural and legal persons who have the nationality of the U.A.E.

4. Companies incorporated in the U.A.E.

(3) The "natural person" shall mean with respect to either Contracting State a natural person having the nationality of that State in accordance with its laws;

(4) The term "legal person" shall mean with respect to either Contracting State, any entity established in accordance with, and recognized as legal person by the law of the State, such as public and private companies, corporations, business associations, authorities, partnerships, foundations, firms, institutions, establishments, agencies, development funds, enterprises, cooperatives, and organizations or other similar entities irrespective of whether their liabilities are limited or otherwise;

(5) The term "returns" shall mean amounts yielded by an investments and in particular, though not exclusively, includes profits, interests, capital gains, share dividends, royalties or fees, and any payments in kind; and in case of reinvested revenues shall enjoy the same protection as investment;

(6) The term "territory" shall be construed to mean, in addition to the zones contained within the land boundaries, the maritime zones. The latter also comprise the marine and submarine zones over which the Contracting States exercise sovereignty, sovereign rights, or jurisdiction under international law.

(7) The term "activities associated with investments" referred to in this Agreement shall include:

(a) The maintenance of branches, agencies, offices, factories and other establishments appropriate to the conduct of business activities;

(b) The control and management of companies which they have established or acquired;

(c) The making and performance of contracts.

(8) The term "freely usable currency" means the United States Dollar, Pound Sterling, Deutsche Mark, Swiss Franc, French Franc, Japanese Yen or other currency that is widely used to make payments for international transactions and for which there are ready buyers in the principal exchange markets.

Article 2. Promotion and Protection of Investments

(1) Each Contracting State shall encourage and create favourable conditions for investors of the other Contracting State to make investments in its territory and, in exercise of powers conferred by its laws, shall admit such investments.

(2) Each Contracting State shall at all times ensure fair and equitable treatment to the investments and returns of investors of the other Contracting State, and investments of the investors shall enjoy full protection and security in the territory of the other Contracting State.

(3) Once established investments shall at all times enjoy full protection and security in a manner consistent with relevant international treaties in which both Contracting States are members.

Each Contracting State shall ensure, subject to its laws and regulations, that the management, maintenance, use, enjoyment, acquisition or disposal of investments, or rights in its territory of investors of the other Contracting State, shall not in any way be subjected to or impaired by any unreasonable or discriminatory measures.

Each Contracting State shall observe any obligation it may have entered into in the documents of approval of investments or the approved investments contracts by investors of the other Contracting State.

(4)

(i) Each Contracting State shall endeavour to take the necessary measures and legislation for granting of appropriate facilities, incentives and other forms of encouragement for investments made by investors of the other Contracting State.

(ii) Investors of either Contracting State shall be entitled to apply to the competent authorities in the host State for the appropriate facilities, incentives and other forms of encouragement and the host State shall grant them all assistance, consents, approvals, licences and authorizations to such an extent and on such terms and conditions as shall, from time to time, be determined by the laws and regulations of the host State.

(5) To attain the objectives of this Agreement, the Contracting States shall encourage and facilitate the formation and established of the appropriate joint entities between the investors of the Contracting States to establish, develop and execute investment projects in different economic sectors in accordance with the laws and regulations of the host State.

(6) Investors of either Contracting State be permitted to engage top managerial personnel of their choice regardless of

nationality to the extent permitted by the laws of the host State. The Contracting States shall make available all necessary facilities including the issuance of visas and permits of stay to such managerial personnel and to their families in accordance with the laws, regulations and administrative practices of the two Contracting States.

(7) Each Contracting State shall encourage the investors to export their products and purchase raw materials and machinery from the local market provided that such materials and machineries are of the technological fitness, quality and price as in the international market.

(8) Each Contracting State shall in accordance with its laws and regulations provide effective means of asserting claims and enforcing rights with respect to investments.

(9) Each Contracting State shall make available all laws, regulations, administrative practices and procedures that pertain to or affect investments.

Article 3. Most-favoured-nation Provisions

(1) Each Contracting State shall in its territory accord investments and returns of investors of the other Contracting State treatment not less favourable than that which it accords to investments and returns of investors of any third State.

(2) Each Contracting State shall in its territory accord investors of the other Contracting State, as regards management, maintenance, use, enjoyment, acquisition or disposal of their investments, or any other activities associated therewith, treatment not less favourable than that which it accords to any investors of any third State.

Article 4. Exception

The provisions of this Agreement relating to the granting of treatment not less favourable than that accorded to the investors of any third State shall not be construed so as to oblige one Contracting State to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from:

(i) Any existing or future customs union, an economic union or free trade area or a common external tariff area or a monetary union or, similar international agreement or other forms of regional or sub-regional cooperation arrangement to which either of the Contracting State is or may become a party; or

(ii) The adoption of an agreement designed to lead to the formation or extension of such a union or area within a reasonable length of time; or

(iii) Any international or regional or sub-regional agreement or other arrangement relating wholly or mainly to taxation or movement of capital or any domestic legislation relating wholly or mainly to taxation.

Article 5. Compensation for Damage or Loss

(1) Investors of one Contracting State whose investments in the territory of the other Contracting State suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot or other similar events in the territory of the latter Contracting State shall be accorded by the latter Contracting State treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting State accords to investors of any third State.

(2) Without prejudice to Paragraph (1) of this Article, investors of one Contracting State who in any of the events referred to in that paragraph suffer damage or loss in the territory of the other Contracting State resulting from:

(a) Requisition of their investment or property by its forces or authorities;

(b) Destruction of their investment or property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation, shall be accorded reasonable and effective compensation without undue delay for the damage or loss sustained during the period of requisitioning or as a result of the destruction of the property. Resulting payments shall be freely transferable.

Article 6. Nationalization or Expropriation

(1) Investments of the investors of either Contracting State shall not be nationalized, sequestered or confiscated, expropriated or subjected to any measures having effect equivalent to nationalization or expropriation in the territory of the other Contracting State.

All such actions shall be referred to as expropriation unless the expropriation:

(a) Is done for public purpose

(b) Is accomplished under the relevant domestic laws.

(c) Is not discriminatory.

(d) Is accompanied by a reasonable; effective and non-discriminatory compensation.

(2) The investor is given the right to prompt review by the courts or administrative bodies of the other Contracting State to determine whether the expropriation has occurred and it is conformed to the principle of the national law, or to review the legality of the expropriation by the competent courts of the other Contracting State that takes such measure.

(3) Such compensation shall be computed on the basis of the market value of the investment immediately prior to the point of time when the decision for expropriation or nationalization was announced or became publicly known, Where the market value cannot be readily ascertained, the compensation shall be determined in accordance with generally recognized principles of valuation and on equitable principles taking into account, inter alia, the capital, invested, depreciation, capital already repatriated, replacement value and other relevant factors. The compensation shall include interest at the current rate of interest applicable to the currency in which the investment was originally undertaken from the date of expropriation until the date of payment. The determination of the amount of compensation, in the absence of agreement being reached between the investor and the host State, shall be referred to arbitration. The amount of compensation finally determined shall be paid to investors in freely convertible currencies and allowed to be repatriated without undue delay.

(4) Where a Contracting State nationalizes or expropriates the assets of a company, firm or other business association or business concern, which is established or licenced under the law in force in its territory and in which investors of the other Contracting State own shares, stocks, debentures or other rights or interest, it shall ensure that fair and reasonable compensation is received in freely convertible currencies and allowed to be repatriated. Such compensation shall be determined on the basis of the recognized principles of valuation such as the market value of the assets immediately prior to the point of time when the decision for nationalization or expropriation was announced or became publicly known. The compensation shall include interest at the current rate of interest applicable to the currency in which the investment was originally undertaken from the date of nationalization or expropriation until the date of payment.

(5) The provisions of Paragraphs (1-4) of this Article shall also apply to the current returns from an investment as well as, in the event of liquidation, to the proceeds from the liquidation.

Article 7. Repatriation of Capital and Returns

(1) Each Contracting State shall in accordance with its laws and regulations, guarantee without delay the transfer out of its territory in any freely usable currency of:

(a) The net profits, dividends, royalties, depreciation of capital assets, technical assistance and technical service fees, and management fees, and interests and other returns, accruing from any investment by an investor of the other Contracting State;

(b) The proceeds accruing from the sale, total or partial liquidation of any investment made by an investor of the other Contracting State;

(c) Funds in repayment of borrowings which both Contracting States have recognized as an investment;

(d) The earnings of nationals of the other Contracting State who are allowed to work in connection with an investment in its territory;

(e) Funds for the acquisition of raw or auxiliary material, semi fabricated or finished products; and

(f) Funds to replace capital assets in order to safeguard the continuity of an investment.

(2) Without restricting the generality of Article 3 of this Agreement the Contracting State undertake to accord to transfers referred to in Paragraph (1) of this Article a treatment as favourable as that accorded to transfers originating from investments made by investors of any third State.

(3) Such transfers as above shall, however, be subject to the rights of the host government to impose reasonable restrictions beyond its existing regulations relating to foreign exchange controls for temporary periods not exceeding six months to meet situations of fundamental economic disequilibrium provided that fifty percent (50%) of such transfers are allowed to

be repatriated during such periods.

Article 8. Subrogation

(1) If a Contracting State (or its designated Agency) makes payment to any of its investors under an indemnity or a guarantee it has granted in respect of an investment or any part thereof in the territory of the host State, or has otherwise become subrogated to any of the rights of such investors with respect to such investment, the host State shall recognize:

(a) The right of the other Contracting State (or its designated Agency) arising from the assignment, indemnity or other subrogation, whether under law or pursuant to a legal transaction, and

(b) That the other Contracting State (or its designated Agency) is entitled by virtue of subrogation to enforce such right and to undertake any obligations in relation to such right.

Such other Contracting State (or its designated Agency) shall accordingly, if it so desires, be entitled to assert any such right to the same extent as its predecessor in title before a competent Court or tribunal in the host State or submit the dispute to arbitration according to the procedures of Article 9 of this Agreement.

(2) If such other Contracting State acquires any amount in such manner as above, it shall be accorded in respect thereof treatment not less favourable than that accorded to the funds of any third State deriving from investment activities similar to those in which the party indemnified was engaged.

Article 9. Settlement of Investment Disputes between the Investor and the Host State

(1) Disputes or differences between one Contracting State and an investor of the other Contracting State concerning an investment of that investor in the territory of the former Contracting State shall, if possible, be settled amicably.

(2) If such disputes or differences cannot be settled according to the provisions of Paragraph (1) of this Article within a period of six months from the date either party requested amicable settlement and the parties have not agreed to any other dispute settlement procedures, the investor concerned may choose one or both of the following means of settlement:

(a) File complaint with the seek relief from the competent administrative authority or agency of the Contracting State in whose territory the investment was made;

(b) File suit with the competent court of law of the Contracting State in whose territory the investment was made.

(3) The dispute relating to the amount of compensation and any other dispute agreed upon by both parties may be submitted to an international Arbitral tribunal.

The international Arbitral tribunal mentioned above shall be especially constituted in the following way:

Each party to the dispute shall appoint an arbitrator.

The two arbitrators shall appoint an arbitrator as Chairman who shall be a national of a third State which shall have diplomatic relations with both Contracting States. The arbitrators shall be appointed within two months and the Chairman within four months from the date when the concerned party notified the other party of its submission of the dispute to arbitration.

If the necessary appointments are not made within the period specified in the previous Paragraph, either party may, in the absence of any other agreement, request the Chairman of the International Arbitration Institute of the Stockholm Chamber of Commerce to make the necessary appointments. The Arbitral Tribunal shall determine its own arbitral procedures by referring either to the Convention on the Settlement of Investment Disputes between States and Nationals of other States done at Washington on March 18, 1965 or the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

The Arbitral Tribunal shall reach its award based upon the provisions of this Agreement, the relevant domestic laws, the agreements both Contracting States have concluded and the generally recognized principles of international law.

The Arbitral Tribunal shall meet in a third State selected by common accord by the parties concerned or, if the choice has not been made within forty five (45) days of the appointment of the final member of the Tribunal, in Stockholm. The tribunal shall reach its decision by a majority of votes. The award shall be final and binding on both parties.

When the tribunal renders an award, it shall state its legal basis and, upon request of either party, shall interpret it.

Each party shall bear the costs of the arbitrator it has appointed and of its own expenses during the arbitration proceedings. The expenses of the Chairman of the Tribunal and other costs shall be borne equally by both parties.

(4) In addition of the foregoing provisions of this Article, disputes between investors of a Contracting State and the investors of the other Contracting State in whose territory the investment was made may be settled by international arbitration in accordance with the arbitration clause between the parties.

(5) Neither Contracting State shall pursue through diplomatic channels any matter referred to arbitration until the proceedings have terminated and a Contracting State has failed to abide by or to comply with the award rendered by the Arbitral Tribunal.

Article 10. Settlement of Disputes between Contracting States

(1) Should any dispute arise concerning the interpretation or application of this Agreement the Governments of the Contracting States shall try to settle the same by negotiations.

(2) If the dispute cannot be so settled it shall, upon the request of either Contracting State, be submitted to an ad hoc Arbitral Tribunal in accordance with the provisions of this Article.

(3) The Arbitral Tribunal shall be constituted in the following way: within two months of the receipt of the request for arbitration, each Contracting State shall appoint one arbitrator. The two arbitrators shall then select a national of a third State who, on the approval by the two Contracting states, shall act as chairman of the Tribunal (hereinafter referred to as the Chairman).

The Chairman shall be appointed within one month from the date of appointment of the other two arbitrators.

(4) If within the period specified in Paragraph (3) of this Article either Contracting State shall not have appointed its arbitrator or the two arbitrators shall not have agreed on the Chairman, a request may be made to the President of the International Court of Justice to make the appointment. If he happens to be a national of either Contracting State or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the appointment. If the Vice-President also happens to be a national of either Contracting State or is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting State shall be invited to make the appointment.

(5) The Arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting State shall bear the costs of its own arbitrator and its counsel in the arbitral proceedings; the costs of the Chairman and the remaining cost shall be borne in equal parts by both Contracting States. The Tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting States. The Arbitral Tribunal shall determine its own procedure.

Article 11. Application to Investments

This Agreement shall apply to investments made in the territory of either Contracting State in accordance with its legislation or rules or regulations by investors of the other Contracting State prior to as well as after the entry into force of this Agreement.

Article 12. Relation between Governments

The provisions of this Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting States.

Article 13. Application to other Rules and Special Commitments

(1) Where a matter is governed simultaneously both by this Agreement any by other agreements to which both the Contracting States are parties or general principles of law commonly recognized by both Contracting States or domestic law of the host State, nothing in this agreement shall prevent investors of either Contracting State who own investments in the territory of the other Contracting State taking advantage of whichever rules are the more favourable to their cases.

(2) Investments subject to special commitments undertaken by one Contracting State with respect to the investors of the other Contracting State shall be governed, without prejudice to the provisions of this Agreement, by the terms of those commitments insofar as their provisions are more favourable than those provided by this Agreement.

Article 14. Mutual Consultation

(1) The representatives of two Contracting States shall hold meetings from time to time for the purpose of:

- (a) Reviewing the implementation of this Agreement;
- (b) Exchanging legal information and investment opportunities;
- (c) Resolving dispute arising out of investment;
- (d) Forwarding proposal on promotion of investment;
- (e) Studying other issues in connection with investment.

(2) Where either Contracting State requests consultation on any matters of Paragraph 1 of this Article, the other Contracting State shall give prompt response and the consultation be held alternately in Beijing and Abu Dhabi.

Article 15. Entry Into Force

This Agreement shall enter into force thirty (30) days after the latter date on which either Contracting State notifies the other that its constitutional or legal requirements for the entry into force of this Agreement have been fulfilled.

Article 16. Duration and Termination

(1) This Agreement shall remain in force for a period of (five) 5 years and shall continue in force thereafter unless one year before the expiry of the initial period or any time thereafter, either Contracting State notifies the Other in writing of its intention to terminate the Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting State.

(2) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of this Agreement shall continue to be effective for a period of twenty (20) years from the date of termination of this Agreement.

Done in duplicate at Abu Dhabi this first day of July 1993, corresponding to 11th of Muharram 1414 A. H., in the Chinese, Arabic and English languages, all texts being equally authentic. In case of divergency, the English text shall prevail.

For the Government of the People's Republic of China

Li Lanqing

Vice Premier of the State Council

For the Government of the United Arab Emirates

Sultan Bin Zayed Al Nahyan

Deputy Prime Minister

Protocol

At the time of signing the Agreement concerning the Promotion and Protection of Investments concluded between the Government of the People's republic of China and the Government of the United Arab Emirates (hereinafter referred to as the "Agreement"),

The undersigned have, in addition, agreed upon the following provisions which shall form an integral part of the Agreement:

1. With Respect to Article 2:

Investors of either Contracting State shall be entitled to apply to the competent authorities in the host State for the

appropriate facilities, incentives and other forms of encouragement (including inter alia, tax relief) to such an extent and on such terms and conditions as shall, from time to time, be determined by the laws and regulations of the host State or by agreement between the Contracting States thereto as the case may be.

2. With Respect to Article 3:

(a) All activities involving the purchase, or transport of raw and auxiliary materials, energy, fuels, as well as means of production and operation of all types shall be accorded treatment not less favourable than that accorded to the investment related activities carried out by investors of any third State. This apply also to the sale or transport of products within the country and abroad.

(b) Nationals authorized to work in the territory of one of the Contracting States shall be accorded the appropriate material support for the exercise of their professional activities by the host State.

(c) The Contracting States shall examine sympathetically, in the light of their domestic laws, the applications for entry and for authorization pertaining to sojourn, work, and travel submitted by the nationals of one Contracting State and their employees pursuant to an investment in the territory of the other Contracting State.

3. With Respect to Article 5:

The principle of non-discrimination applicable to compensation for loss owing to the events stated in Paragraph (2) of Article 5 of this Agreement shall be applied to all investors regardless of their nationalities.

4. With Respect to Article 6:

(a) If the original investment was undertaken in United States Dollars, then the compensation shall include interest at the current LIBOR rate of interest from the date of expropriation, nationalization or similar measures until the date of payment.

(b) If a compulsory sale of investment occurs by a host State then the losses arising from such action will be compensated pursuant to the set of procedures of Article 6.

5. With Respect to Article 7:

The transfers referred to in Article 7 of this Agreement shall mean the transfers which shall be made from the foreign exchange deposit account in the People's Republic of China of investors of the United Arab Emirates in accordance with the foreign exchange control regulations of the People's Republic of China.

When an investor of the United Arab Emirates does not have sufficient foreign exchange for the transfer, the Government of the People's Republic of China shall provide foreign exchange for the transfer of:

(1) The payment for copyrights, trademarks, patents and other industrial property rights, know-how, trade names and technical assistance and technical service related to investments undertaken by investors of the United Arab Emirates.

(2) The proceeds accruing from the total or partial liquidation of any investment made by investor of the United Arab emirates and compensation referred to in Paragraph (2) of Article 5 and article 6 of this Agreement.

(3) The funds mentioned in Paragraph (1-c) of Article 7 of this Agreement if such funds are guaranteed by the Bank of China.

(4) Returns accruing from investments by investors of the United Arab to the investors concerned to sell their products in domestic market of the People's Republic of China.

(5) The earnings of all employees who are allowed to work in connection with an investment made by a United Arab Emirates investor in the territory of the People's Republic of China.

6. With Respect to Article 9:

(1) The disputes which may be referred to international arbitration under Paragraph (3) of Article 9 of this Agreement shall be the following:

(a) Disputes relating to the amount of compensation referred to in Article 6 and in Paragraph (2) of Article 5 of this Agreement;

(b) Any other investment dispute which may be agreed upon by both Contracting States to be submitted to arbitration;

(2) Article 9 of this Agreement shall be applied and interpreted by the two Contracting States in good faith and on mutual understanding to provide effective procedures for settlement of investment disputes of investors of the Contracting States.

(3) The Contracting States have agreed that when they both become parties to the Convention on the Settlement of Investment Disputes between States and National of other States open for signature at Washington on 18 March 1965, they will discuss the Possibility to submit the investment disputes to ICSID.

Signed in two originals at Abu Dhabi, this first day of July 1993, corresponding of 11th of Muharram 1414 A. H., in the Chinese, Arabic and English languages, all texts being equally authentic.

In case of divergency, the English text shall prevail.

For the Government of the People's Republic of China

Li Lanqing

Vice Premier of the State Council

For the Government of the United Arab Emirates

Sultan Bin Zayed Al Nahyan

Deputy Prime Minister